

AO 120 (Rev. 2/99)

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 11-06626 LB	DATE FILED 12/23/11	U.S. DISTRICT COURT Northern District of California, 1301 Clay St., Rm 400S, Oakland, CA 94612
PLAINTIFF TAGGED INC.		DEFENDANT FOTOMEDIA TECHNOLOGIES LLC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
¹ 6,058,399		SEE ATTACHED
² 6,324,545		
³ 7,287,088		
⁴ 7,587,514		
⁵ 7,841,210		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1		SEE ATTACHED	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wicking	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
COURT W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 Tagged, Inc.,

12 Plaintiff,

13 v.

14 Fotomedia Technologies, LLC

15 Defendant.

16 CASE NO. 11-0003

**COMPLAINT FOR DECLARATORY
JUDGMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Tagged Inc.'s ("Tagged") brings this action for declaratory judgment against
2 Defendant Fotomedia Technologies LLC ("Fotomedia") and alleges as follows:

3 **PARTIES**

4 1. Tagged is a corporation existing under the laws of Delaware, with a principal
5 place of business at 110 Pacific Avenue, San Francisco, California 94111.

6 2. On information and belief, defendant FotoMedia is a Delaware limited liability
7 company having a place of business at 155 Fleet Street, Portsmouth, New Hampshire 03801.

8 **JURISDICTIONAL STATEMENT**

9 **Jurisdiction**

10 3. This is a declaratory judgment action for patent non-infringement arising under
11 the patent laws of the United States, Title 35, United States Code, Section 100 et seq. This
12 Court has subject matter jurisdiction over this controversy pursuant to 28 U.S.C. §§ 1331,
13 1338(a), 2201, and 2202.

14 4. An actual, substantial and continuing justiciable controversy exists between
15 Tagged and Fotomedia based on Fotomedia having previously filed a complaint for patent
16 infringement against Tagged and other defendants in the action titled Fotomedia Technologies
17 LLC v. Facebook Inc. et al., United States District Court for the District of Delaware, Civil
18 Action No. 1:11-cv-00826-MMB (the "Facebook Action"). In the Facebook Action, Fotomedia
19 alleged that Tagged infringed U.S. Patent Nos. 6,058,399 ("the '399 patent"), 6,324,545 ("the
20 '545 patent"), 7,287,088 ("the '088 patent"), 7,587,514 ("the '514 patent"); and RE41,210 ("the
21 '210 patent") (collectively, the "Facebook Action Patents"). Copies of these patents are attached
22 hereto as exhibits A through E.

23 5. On December 22, 2011, Fotomedia dismissed the Facebook Action with respect
24 to Tagged. The dismissal was without prejudice.

25 6. Fotomedia did not provide any explanation for the dismissal, and Fotomedia and
26 Tagged have not reached a resolution of the dispute created by Fotomedia's initiation of the
27 Facebook Action against Tagged.
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1 7. Tagged requires a declaration by this Court of its rights with respect to
2 Fotomedia's allegations that Tagged infringed the Facebook Action Patents.

3 8. This Court has personal jurisdiction over Fotomedia based on Fotomedia's
4 presence in California and continuous and systematic contacts with California. On information
5 and belief, Fotomedia—both directly and through its parent company, Scenera Research LLC—
6 has been pursuing licensing activities and enforcement activities in California and, specifically,
7 in the Northern District of California, since at least 2007. In 2007 Fotomedia asserted a number
8 of patents, including patents related to one of the patents Fotomedia asserted in the Facebook
9 Action, against several companies that are located in the Northern District of California,
10 including for example Yahoo! Inc., and Shutterfly, Inc. Fotomedia's assertion of patents against
11 companies that are located in the Northern District of California is shown, for example, by the
12 proceedings and records in two cases filed in the Eastern District of Texas, Case Nos. 2:07-cv-
13 00255 and 2:07-cv-00256. Fotomedia's assertion of patents against companies that are located
14 in the Northern District of California is also shown by the Facebook Action. Upon information
15 and belief, Fotomedia has met, attempted to do business with, and/or done business with,
16 including in some instances by reaching patent licensing arrangements with, companies that are
17 located in the Northern District of California, including Yahoo! Inc., Shutterfly Inc., Facebook
18 Inc., and Tagged.

19 **Venue**

20 9. Venue is proper within this judicial district pursuant to 28 U.S.C. §§ 1391(b) and
21 (c).

22 **Intradistrict Assignment**

23 10. This action arises in San Francisco County because a substantial part of the
24 events giving rise to the claim occurred in San Francisco County. Pursuant to Civil Local Rule
25 3-2, the action is properly assigned to the San Francisco Division of the Northern District of
26 California.

1 **TAGGED's CLAIMS FOR RELIEF**

2 11. Apple repeats and re-alleges each and every allegation of paragraphs 1 through
3 10 above, and incorporates them by reference as if fully set forth herein.

4 12. On information and belief, Fotomedia claims to be the owner of all right, title and
5 interest in the '399 patent, the '545 patent, the '088 patent, the '514 patent, and the '210 patent.

6 13. Fotomedia previously filed a complaint in the Facebook Action against Tagged
7 alleging that Tagged directly infringed and/or induced infringement and/or contributed to the
8 infringement of the '399 patent, the '545 patent, the '088 patent, the '514 patent, and the '210
9 patent.

10 14. Tagged has not directly infringed, induced infringement, or contributed to the
11 infringement of any valid claims of the '399 patent, the '545 patent, the '088 patent, the
12 '514 patent, and the '210 patent.

13 15. An actual case or controversy exists between Tagged and Fotomedia based on
14 Fotomedia's previously-filed complaint against Tagged in the Facebook Action.

15 16. Tagged has been injured and damaged by Fotomedia's accusations of
16 infringement.

17 17. Declaratory relief is appropriate and necessary to establish that Tagged has not
18 directly or indirectly infringed any valid claims of the '399 patent, the '545 patent, the
19 '088 patent, the '514 patent, or the '210 patent.

20 18. Pursuant to 28 U.S.C. §§ 2201, et seq., Tagged requests a declaratory judgment
21 that it does not infringe any valid claims of the '399 patent, the '545 patent, the '088 patent, the
22 '514 patent, or the '210 patent.

23 **RELIEF**

24 WHEREFORE, Tagged hereby requests that this Court:

25 a. Render judgment declaring that Tagged has not infringed, and is not infringing,
26 any valid claims of the '399 patent, the '545 patent, the '088 patent, the '514 patent, or the '210
27 patent, either directly or indirectly, and either literally or under the doctrine of equivalents.
28

- 1 b. Award Tagged its fees and costs, including attorneys fees, pursuant to 35 U.S.C.
2 § 285; and
3 c. Award Tagged such other and additional relief as this Court deems just and
4 proper.

5 **JURY DEMAND**

6 Tagged, Inc. requests a trial by jury on all issues so triable.

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8 Dated: December 23, 2011

Respectfully submitted,

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